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UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

WILLIAM JEFFERY EDWARDS,) Cause No. _____
Plaintiff,)
vs.) [formerly Montana Twentieth Judicial
NELSON TRUCKING CO., INC.,) District Court Cause No. DV-13-03]
Defendant.)

NOTICE OF REMOVAL

Defendant Nelson Trucking Co., Inc., hereby removes Cause No. DV-13-03 from the Montana Twentieth Judicial District Court to the United States District Court for the District of Montana, Missoula Division, pursuant to 28 U.S.C. §§1332, 1441, and 1446, and as grounds for its removal states as follows:

1. On January 15, 2013, Plaintiff William Edwards filed a Complaint in Montana Twentieth Judicial District Court, styled *William Jeffery Edwards v. Nelson Trucking Co., Inc.*, Cause No. DV-13-03 (the “State Court Action”).

2. On September 19, 2013, Defendant, Nelson Trucking Co., Inc., was served with the Summons and Complaint that are attached hereto as **Exhibit A**.

3. As specified more completely in the attached Complaint, Plaintiff alleges that he sustained physical and emotional injuries, lost personal property, and other consequential damages caused by the fault of the Defendant (and/or Defendant's servants and employees), in a collision on April 27, 2010 between a tractor-trailer vehicle operated by the Defendant and a tractor-trailer vehicle operated by Plaintiff.

DIVERSITY JURISDICTION UNDER 28 U.S.C. §1332(a)

4. This Court has jurisdiction over this matter under 28 U.S.C. §1332(a), because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy is more than \$75,000, exclusive of interest and costs.

5. Plaintiff is, and was at all material times a resident of the state of South Carolina. As a resident of South Carolina, Plaintiff is a citizen of South Carolina. U.S. Const. 14th Amend.

6. Defendant is a corporation organized under the laws of the state of Washington, with its principal place of business in Seattle, Washington. Complaint, ¶1. Therefore, Defendant is a citizen of the State of Washington. 28 U.S.C. §1332(c)(1).

7. There is complete diversity of citizenship between Plaintiff and Defendant in this action.

8. As required by §25-4-311, M.C.A., Plaintiff does not quantify the amount of damages he seeks to recover in this case. *See*, Complaint, Prayer for Relief. Given that Plaintiff's Complaint alleges personal injury, lost personal property, and consequential damages, from the face of the Complaint it is apparent that the amount in controversy more likely than not exceeds \$75,000, exclusive of interest and costs. Additionally, Plaintiff's attorney in September 2012 made demand on Defendant's insurer, claiming damages in excess of \$200,000. When the plaintiff's damages are unquantified in the complaint, the amount in controversy can be established by allegations in the removal notice referencing allegations on the face of the Complaint. *Singer v. State Farm Mutual Automobile Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *Allen v. R & H Oil and Gas Co.*, 63 F.2d 1326, 1335 (5th Cir. 1995); 28 U.S.C. §1446(c)(2).

**ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE
BEEN SATISFIED**

9. Pursuant to 28 U.S.C. §1446(a), a true and correct copy of all of the process, pleadings, orders and documents from the State Court Action which have been served upon Defendant are being filed with this Notice of Removal. (**Exhibit**

A.) Defendant will file true and legible copies of all other documents on file in the State Court Action within 30 days of the filing of this Notice of Removal.

10. This Notice of Removal has been filed within 30 days of the date that Defendant was served with the Summons or the Complaint in this matter. Removal is therefore timely in accordance with 28 U.S.C. §1446(b).

11. Venue is proper in this Court pursuant to 28 U.S.C. §1441(a) and 1446(a), and L.R. 1.2, because the State Court Action is pending in the Montana Twentieth Judicial District Court located in Sanders County, and Sanders County is within the United States District Court for the District of Montana, Missoula Division.

12. This Notice of Removal has been served on Plaintiff's counsel by mail.

13. A Notice of Removal to Federal Court (attached as **Exhibit B**) (with a copy of this Notice of Removal) is being mailed to the Montana Twentieth Judicial District Court, Sanders County, contemporaneously with the electronic filing in this Court of Notice of Removal. 28 U.S.C. §1446(d).

14. The undersigned counsel hereby certifies that there are no hearings set before the Montana Twentieth Judicial District Court, Sanders County, from which this case is removed. Additionally, Defendant has filed no pleadings in the State

Court Action, but intends to respond to the Complaint within the times specified by Rule 81, F.R.Civ.P.

CONCLUSION

By filing this Notice of Removal, Defendant does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to this action. Defendant intends no admission of fact, law or liability by this Notice, and expressly reserves all defenses, motions and/or pleas.

Because Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs, this Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1332. Defendant is therefore entitled to remove this case to this Court pursuant to 28 U.S.C. § 1441.

DATED October 4, 2013.

Respectfully Submitted,

/s/ Lee C. Henning

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ATTORNEYS FOR DEFENDANT

EXHIBIT A: Summons and Complaint served on Defendant

EXHIBIT B: Notice to the Montana Twentieth Judicial District Court

EXHIBIT C: Civil Cover Sheet

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2013, a copy of the foregoing document was served on the following persons by the following means:

1 CM/ECF
 Hand Delivery
2,3 Mail
 Overnight Delivery Service
 Fax
 E-Mail

1. Clerk, United States District Court
2. William J. Speare
Speare Law Firm, PC
P.O. Box 21220
Billings, MT 59104
3. Candy Fisher
Clerk of District Court–Sanders County
Twentieth Judicial District Court
P.O. Box 519
Thompson Falls, MT 59873

/s/ Lee Henning

Lee C. Henning
Henning, Keedy & Lee, P.L.L.C.
ATTORNEYS FOR DEFENDANT